IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

OP.No. 16112 of 1999(R)

PETITIONER:

T.C.ROY, DEVELOPMENT OFFICER,
BRANCH OFFICE, UNITED INDIA,
INSURANCE CO.LTD.,
CHANGANACHERRY.

BY ADV. SRI.SANTHOSH MATHEW

RESPONDENTS:
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1. **UNITED INDIA INSURANCE CO.LTD.,**
   REGISTERED & HEAD OFFICE,
   24, WHITES ROAD
   MADRAS 600 014, REP.BY ITS MANAGING DIRECTOR.

2. **THE DIVISIONAL MANAGER,**
   UNITED INDIA INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, OPPOOTTIL
   BUILDINGS, K.K.ROAD, KOTTAYAM.

3. **THE BRANCH MANAGER, BRANCH OFFICE,**
   UNITED INDIA INSURANCE CO. LTD.,
   DOCTORS TOWERS, M.C.ROAD,
   CHANGANACHERRY.

BY ADV. SRI.THOMAS JOHN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.26185/1999 IN OP. NO.16112/1999

CLOSED.

20.06.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CALCULATION WITH RESPECT OF PROFIT INCENTIVE-PERFORMANCE FOR THE YEAR 1994-95 OF THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE INTIMATION NO.100500/STCS/96 DT. 15.7.96 OF THE 2ND RESPECT ISSUED TO THE PETITIONER.

EXT.P3:- COPY OF THE NOTICE DT. 18.5.98 OF THE ASSISTANT MANAGER, UNITED INDIA INSURANCE CO.LTD., DIVISIONAL OFFICE, KOTTAYAM ISSUED TO THE PETITIONER.

EXT.P4:- COPY OF THE ORDER DT. 6.10.98 IN CMP. 33753/98 IN OP. 19169/98 OF THIS HONOURABLE COURT.

EXT.P8:- COPY OF THE INTIMATION NO.100500/MKTG/15199/99 DT. 24.6.99 OF THE 2ND RESPECT ISSUED TO THE PETITIONER.

EXT.P6:- COPY OF THE LETTER NO.03/176/RR/21416/1163 DT. 21.4.98 ISSUED BY THE GENERAL MANAGER- BANKING & INSURANCE OF MRF LTD., TO THE PETITIONER, AND SHRI JACOB MATHEW.

EXT.P6(a):- COPY OF THE LETTER NO.03/176/RR/21416/1161 DT. 21.4.98 ISSUED BY THE GENERAL MANAGER-BANKING & INSURANCE OF MRF LTD. TO THE PETITIONER AND SHRI JACOB MATHEW REFERRED TO IN THE ORIGINAL PETITION.

EXT.P6(b):- COPY OF THE LETTER NO.03/176/RR/21416/1162 DT. 21.4.98 OF THE GENERAL MANAGER- BANKING & INSURANCE OF MRF LTD., ISSUED TO THE PETITIONER AND SHRI.JACOB MATHEW.

EXT.P7:- COPY OF THE INTIMATION DT. 14.7.98 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS
EXT.R2(a):- COPY OF THE EXTRACT OF THE GUIDELINES ISSUED BY GENERAL INSURANCE CORPORATION.

/TRUE COPY/

tss

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 16112 of 1999 (R)

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Dated this the 29th day of June, 2007

J U D G M E N T

The petitioner is aggrieved by the proceedings issued as per Ext.P5 whereby he has been intimated that he is not entitled for payment of non-core allowances for the financial year 1999-2000 and also proposing to adjust an amount of Rs.49,946/-.

2. The case of the petitioner is that as Development Officer in Changanassery Branch, he has been working under the first respondent company from 1971. He had been canvassing business for the company also. As per General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976, various service conditions and benefits are provided for such Development Officers and, admittedly, the petitioner is also governed by that. Clause 3 (13A) defines non-core allowance which is payable to a Development Officer on the basis of the business generated by him. It means entertainment allowance, conveyance allowance or such other allowances which are allowed or may be allowed

by the Corporation. The non-core allowance is fixed on the basis of the "Scheduled Premium Income" which is defined in Clause 3(16) of the Scheme, which reads as follows:-

> "3(16). 'Scheduled Premium Income' means the premium income secured by a person of the Development Staff (other than Development Superintendents) or the premium under the Organisation of a Development Superintendent, as the case may be, excluding the premium income in respect of -
> a) Aviation Insurance Business,
> b) Marine Hull Insurance Business
> c) Credit Insurance Business
> d) Public Sector Business
> e) Tied Business
> f) Compulsory Public Liability Insurance Business, and
> g) Oil and Energy risks."

3. The payment of non-core allowance is again dependent upon the Cost Ratio, which is also defined in Clause 3(8) of the Scheme. The same is extracted below:-

> “3(8). 'Cost Ratio' in respect of a performance year means the ratio expressed as percentage of the cost incurred on a Development Officer to the Scheduled Premium Income procured through him.”

4. The petitioner admittedly has been canvassing business for the Corporation and, according to him, during 1994-95 the Scheduled Premium income generated by the petitioner was Rs.62,37,042/- and the total cost incurred by the first respondent during 1994-95 was Rs.1,16,562/-. The cost ratio was only 1.87%, whereas, the permissible cost ratio was 10%. Accordingly, he was paid an amount of Rs.39,360/- as profit incentive during 1994-95. For the year 1995-96 also the petitioner has given figures in paragraphs '9' of the original petition and the petitioners case is that non-core benefits were given by the first respondent during 1996-97 and in the succeeding years till May 1999. In paragraph '14' of the original petition, the petitioner has detailed the figures for the year 1998-99 also.

5. The petitioner was also being paid other benefits known as development allowance and there was a dispute between the first respondent and the petitioner regarding the recovery of an excess sum paid to him on that account. That was a subject matter of O.P.No.19169/1998. While that original petition was pending, Ext.P5 has been issued to him and the petitioner challenges Ext.P5 on various grounds herein. It is submitted that for the year 1998-99, a total business of Rs.63,34,027/- was generated by the petitioner and out of which Rs.55,66,558/- was generated from MRF Company alone and the petitioner's cost ratio is 2.67% and it never exceeded permissible stipulated cost of 13%, and hence, he is entitled to be paid the non-core allowance. In ground 'E', the petitioner has got a further case that similar benefit was given to another Assistant Divisional Manager, one Shri Jacob Mathew, for canvassing business at the office at Chennai by MRF Limited.

6. The respondent has filed a counter affidavit. The averments mainly relate to the mistake occurred with regard to the computation of development allowance. According to the

respondent, the petitioner is not entitled to take into account the notional business credit in respect of policies issued to MRF Ltd. for the computation of development incentive, going by Ext.R2(a) guidelines issued by the General Insurance Corporation. Therefore, it is contended that the payment to that account was by mistake and the steps for recovery taken by them are legally correct. Actually, the said issue is the one which was under consideration in the O.P.No.19169/1998. In Ext.R2(a) guidelines, different clauses are mentioned for various purposes. But as far as payment of non-core allowances is concerned, no such exclusion clause is discernible from Ext.R2(a). Apart from that Ext.R2(a) which is only an administrative instruction cannot supersede the Scheme mentioned earlier. Therefore, the provisions of Ext.R2(a) cannot control the specific provisions of the Scheme 1976. Hence, the contentions based on Ext.R2(a) by the respondents, cannot be accepted at all. Therefore the petitioner is entitled to succeed on that score.

7. In answer to the contentions raised in the original petition in paragraph '11' of the counter affidavit, it is contended that

Sub Clause 2 of paragraph '11' of the Scheme was amended in 1996 and the said Sub Clause stipulates that if the cost ratio in respect of a Development Officer for a particular performance year exceeds his stipulated limits, the non-core allowance payable to him in the following performance year shall be reduced to the extent of the amount by which his cost ratio exceeded the stipulated limits. Here, it is not the case that the cost ratio has exceeded 13%. The case of the petitioner is that it is only 2.67%, which is not disputed also by the respondents. For this reason, the stand taken in Ext.P5 is totally erroneous.

8. Going by the definition of Schedule Premium Income contained in Clause 3(16) of the Scheme, the exclusion of premium income is in respect of items shown as 'a' to 'g', which are Aviation Insurance business, Marine Insurance business, Credit Hull Insurance business, Public Sector business, Tide business, Compulsory Public Liability Insurance business and Oil and Energy risks. Herein, the business generated is Fire Premium, Miscellaneous Premium and Product Liability Premium. Therefore, the same will not come within the

exclusion clause in Clause 3(16) of the Scheme. The learned counsel for the first respondent contended that the business generated outside the particular Divisional Office cannot be accounted for the purpose of calculating the Scheduled Premium Income. There is no such stipulation in Clause 3(16) and, when specific exclusion clauses are provided, it cannot be widened by any other method also. Yet another argument is that, going by Clause (b) of Ext.R2(a), extension of notional credit of the business among other Development Officers of the same company shall be done only with prior approval of the Company's Head Office. According to me, the said clause has nothing to do with the payment of non-core allowance. Since the cost ratio herein has not exceeded the outer limit of 13% the petitioner is entitled to succeed. The business generated from MRF Company cannot be excluded, to the disadvantage of the petitioner. The Company has, therefore not incurred any excess cost as stated in Ext.P5.

9. Further, the counsel for the petitioner points out that for the last 20 years he was being paid the allowance for the

business with MRF Ltd, till May 1999, and only by Ext.P5 it was sought to be interfered with. Apart from that, as contended above ExtR2(a) is only an extract of the guidelines issued by the General Insurance Corporation which cannot be superseded by the specific clauses of the scheme. Further, merely because a Clause for prior approval of Head Office is provided in Ext.R2(a) guidelines, that would not defeat the rights of the Development Officer. The learned counsel for the first respondent relied upon clauses (g) and (h) of Ext.R2(a) also in support of the contentions. They do not deal specifically the issue arising herein. For all the reasons stated above, the said clauses have also no relevance here.

10. The counsel for the first respondent brought to my notice the judgment of W.A.No.439/2002, which arose from the judgment in O.P.No.19169/1998. The issue considered therein is in respect of the development incentive and it is different also.

In the light of the above findings, Ext.P5 does not reflect the correct position and the same is illegal. Therefore, I quash

Ext.P5 and it is directed that the business generated by the petitioner, by way of premium collected from MRF company should be accounted for the purpose of calculating non-core benefits for the year 1999-2000.

The original petition is allowed as above.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 16112 of 1999 (R)

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J U D G M E N T

29th June, 2007